



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1992

Mr. T. A. Pounders
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR92-392

Dear Mr. Pounders:

As counsel for the City of Dallas, you ask whether certain information relating to the death of Dallas police officer Harold Hammons is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16210.

The City has received a request pursuant to the Open Records Act for all information "gathered during the investigation by the Special Investigations Unit into the death of [Officer] Harold Hammons." The City represents, and the information submitted for our review shows, that Officer Hammons died in the line of duty, and that Officer Hammons' survivors have filed with the City Secretary a notice of personal injury claim against the City. Such a notice is a prerequisite to suit pursuant to Dallas City Charter chapter XXIII, section 1. The City claims that the requested information is excepted from required public disclosure by Open Records Act sections 3(a)(3), 3(a)(7), and 3(a)(11).

The records submitted for our review include Officer Hammons' autopsy. Pursuant to Texas Code of Criminal Procedure article 49.25, section 11, the medical examiner's autopsy is deemed a public record. This office has previously opined that where a specific statute deems a record a public record, the exceptions of the Open Records Act do not apply. See Open Records Decision No. 525 (1989). Accordingly, the autopsy of Officer Hammons is a public record and should be furnished to the requestor.

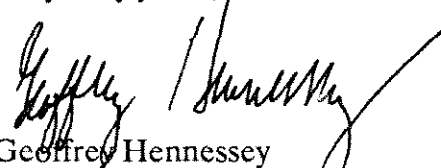
Section 3(a)(3) excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Information is excepted from public disclosure by section 3(a)(3) where litigation is pending or reasonably anticipated and the information relates to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). This office has previously opined that litigation is reasonably anticipated where a demand for damages has been made and further legal action is threatened if the demand is not met. See Open Records Decisions Nos. 551 (1990); 452 (1986); 418 (1984); 386 (1983); 346 (1982). In the present case, litigation can be reasonably anticipated because of the notice of claim served on the City by Officer Hammons' survivors. We have examined the investigative file submitted for our review, and have concluded that it relates to the litigation. Accordingly, we conclude that the requested information (with the exception of the autopsy) is excepted from required public disclosure by section 3(a)(3). Because we resolve this matter under section 3(a)(3), we do not address your claims that this information is also excepted by sections 3(a)(7) and 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-392.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 16210
ID# 16350

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